

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

CARLOS DAVILA

13 Civ.6651 (KPF)

Plaintiff(s)
vs.

**AMENDED
CIVIL RIGHTS COMPLAINT**

**NEW YORK CITY ,
NYPD OFFICER GOMERA AND
SGT. JOSEPH ROSENBERGER**

Defendant(s)

PURSUANT TO 42 U.S.C. § 1983;

Plaintiff(s) by Order Dated November 26, 2013 hereby Amend the above-captioned for the complaint asserts the following amending claims against the defendants in the above-entitled action:

INTRODUCTION

- 1- This is a civil rights action damages for Defendant's violation of Plaintiff's rights, privileges and immunities under the United States Constitution, as amended, and the Civil Rights Act of 1871, 42 U.S.C Section 1983,
- 2- On October 11, 2012 , Plaintiff was deprived of his liberty without due process of law and his right to equal protection of the laws, and the due course of justice was impeded, in violation of the Fifth and Fourteenth Amendments of the Constitution of the United States and 42 U.S.C. sec. 1983.
- 3- Defendant's egregious misuse of a legal proceeding resulting in a constitutional deprivation.

PARTIES

4. Plaintiff CARLOS DAVILA, is a U.S Citizen, residents in Bronx County, State of New York, City of New York at the time of the events giving rise to the complaint.

5. Defendant The New York City is a municipality organized and existing under the law of the State of New York. At all time relevant hereto, The New York City acting through the New York City Police Department, were responsible for the policy, practice, supervision, implementation, and conduct of all New York City Police Department and were responsible for the appointment, training supervision, and conduct of the Police Department personnel. In addition, at all relevant times, Defendant were responsible for enforcing the rules of the New York City, State of New York, and for ensuring that the Police Officers and Detectives personnel obey the Law of the United States and of the State of New York.

6. Defendants officer Gomera and Sgt. Joseph Rosenberger, Acting under the color of law and acting in the capacity of agents, servant, and employees of the Defendants New York Police department and within the scope of their employment as such. Each of these officers is sued in their individual and official capacities.

JURISDICTION AND VENUE

7. This action arises under the Fourth and Fourteenth Amendment to the United States Constitution, 42 U.S.C. § 1983. and The Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1343(a), (3) and (4), 1376 (a), 2201, the doctrine of pendent jurisdiction. and pendent claim.

8.- Jurisdiction of this court for the pendent claims is authorized by F.R.Civ.P. 18(a), and arises under the doctrine of pendent jurisdiction as set forth in United Mine Workers v. Gibbs, 383 U.S. 715 (1966).

9. The acts complained of occurred in the Southern District of New York and venue is lodged in this Court pursuant to 28 U.S.C § 1391 (b).

10- That Plaintiffs has complied with their 90 days obligation by filing a Notice of Claim with the Controller Offices. The case filed against each Plaintiff was dismissed and defendants were place on Notice from the date of occurrence because they were

responsible for the plaintiffs arrest and they know or should has know that the arrest was false and in violation of the United State Constitution.

JURY DEMAND

11. Plaintiff demands trial by jury in this action.

FACTUAL ALLEGATIONS

12.- Then, Defendants officer Gomera and Sgt. Joseph Rosenberger subjected Plaintiff to custodial interrogation in violation of his Miranda rights. Plaintiff was then taken into custody.

- Plaintiff was then charged with the following charges; Violation of Penal Law 130.50 02 B Felony Criminal Sex Act; Penal Law 130.20 02 A Misdemeanor Sex Misconduct: Oral/anal conduct; Penal Law 130.60 01 A Misdemeanor, Sex contact; Penal Law 130.52 A Misdemeanor Forcible Touching; Penal Law 130.65 D Felony Sexual Abuse and Penal Law 130.40 E Felony Criminal Sex Act.

13. For all this charges Plaintiff was subject to \$50,000.00 Bail that he was unable to pay. He was facing 5 years of probation and register as a Sex offender.

14. On 4/30/2013 all charges against the Plaintiffs were dismissed and sealed

PART TWO: FIRST CAUSE OF ACTION Count 1: violation of 42 U.S.C. 1983: conspiracy,

(Against all defendants)

15-All plaintiffs repeats and re-alleges and incorporates by reference the allegations in paragraphs 1 through 14 above with the same force and effect as if herein set forth.

16- At all times relevant herein, the conduct of all Defendants were subject to 42 U.S.C. secs. 1983, 1985, 1986, and 1988.

17-. Acting under the color of law, all defendants deprived Plaintiffs of rights, remedies, privileges or immunities secured by the United States Constitution or by Federal law, in

violation of 42 U.S.C 1983, including, but not limited to, rights guaranteed by the Fourth and Fourteenth Amendments of the United States Constitution.

(a) By depriving Plaintiffs of their liberty without due process of law, by taking them into custody and against his will,

(b) By conspiring for the purpose of impeding and hindering the due course of justice, with intent to deny Plaintiffs equal protection of laws,

(c) By refusing or neglecting to prevent such deprivations and denials to plaintiffs, thereby depriving plaintiffs of their rights, privileges, and immunities as guaranteed by the Fourth, Fifth, and Fourteenth Amendments to the Constitution of the United States.

18. In addition, conspired among them to deprive Plaintiffs of his constitutional rights secured by 42 U.S.C 1983 and by Fourth and Fourteenth Amendments to the United States Constitution, and took numerous overt steps in furtherance of such conspiracy, as set forth above.

WHEREFORE, Plaintiff demands judgment for the false arrest and for unreasonable search and seizure of his property without due process of law, against all the Defendants jointly and severally, for actual, general, special, compensatory damages in the amount deemed at time of trial to be just, fair, and appropriate and such other relief deemed to be just and equitable.

SECOND CAUSE OF ACTION

COUNT 2: VIOLATIONS OF 42 U.S.C. 1983: DETENTION AND CONFINEMENT (Against all defendants)

19. Plaintiffs repeat and re-alleges and incorporates by reference the allegations in paragraphs 1 through 19 above with the same force and effect as if herein set forth.

20. As a result of their concerted unlawful and malicious detention and confinement of Plaintiffs, Defendants deprived The Plaintiffs of his rights to his liberty without due process of law and his right to equal protection of the laws, and the due course of justice

was impeded, in violation of the Fifth and Fourteenth Amendments of the Constitution of the United States and 42 U.S.C. sec. 1983.

22- As a direct result of their unlawful and malicious detention and confinement of Plaintiffs, each suffered the following injuries;

WHEREFORE, Plaintiff demands judgment for the false detention and confinement against all the Defendants jointly and severally, for actual, general, special, compensatory damages in the amount:

- A- On the First Claim for Relief against the all Defendants, compensatory and punitive damages in an amount to be determined at trial, and reasonable attorneys' fees and cost under U.S.C § 1988 or One and a half Million Dollar
- B- On the Second Claim for Relief against all Defendants, compensatory damages in an amount to be determine at trial, and punitive damages against the officers Defendants in an amount to be determined at trial and reasonable attorneys' fees and cost under U.S.C § 1988 or; One and a half Million Dollar
- C- and or compensatory damages in an amount deemed at time of trial to be just, fair, and appropriate.

Dated: 02/10/2014
Bronx, New York

I declare under penalty of perjury that the above information is true to my knowledge.



CARLOS DAVILA